

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 610

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO WILDLIFE; ENACTING THE WILD HORSE PROTECTION ACT;
PROVIDING FOR THE PROTECTION OF WILD HORSES; PROVIDING FOR
THEIR ADOPTION UNDER CERTAIN CIRCUMSTANCES; PROVIDING A
CRIMINAL PENALTY; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 6 of this act may be cited as the "Wild Horse
Protection Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the
Wild Horse Protection Act:

A. "board" means the New Mexico livestock board;
and

B. "wild horse" means a free-roaming and unowned
horse. A free-roaming horse shall be presumed to be a "wild

1 horse" if it is not:

- 2 (1) branded;
- 3 (2) identified by a freeze mark or freeze
- 4 brand approved by the New Mexico livestock board;
- 5 (3) subject to a registration certificate from
- 6 a recognized breed association; or
- 7 (4) an offspring with a mare identified in
- 8 Paragraphs (1) through (3) of this subsection.

9 Section 3. [NEW MATERIAL] WILD HORSES-- PROTECTION-- TAKING
10 OR IMPOUNDING PROHIBITED-- PENALTY. --

11 A. Wild horses shall be protected as a valuable
12 resource of this state. The board shall promulgate such rules
13 as are necessary to protect wild horses.

14 B. Except as allowed pursuant to the Wild Horse
15 Protection Act, no person shall take, possess, impound or sell
16 wild horses or parts thereof.

17 C. A person who violates any provision of the Wild
18 Horse Protection Act or a rule adopted pursuant to that act is
19 guilty of a fourth degree felony and shall be sentenced in
20 accordance with the provisions of Section 31-18-15 NMSA 1978.

21 Section 4. [NEW MATERIAL] IMPOUNDMENT AUTHORIZED. --

22 A. A person may impound a wild horse on property
23 the person owns or controls only if the wild horse has damaged
24 or is threatening to damage the person's property. Within
25 twenty-four hours of impounding a wild horse, the person shall

1 notify the board of the impoundment.

2 B. The board, upon receiving notification that a
3 wild horse has been impounded, shall, within twenty-four hours,
4 take possession of the wild horse.

5 C. If, after taking possession, the board
6 determines that the horse was not a wild horse when impounded,
7 the board shall pursue the sale or other disposal of the horse
8 pursuant to The Livestock Code. If the board determines that
9 the horse was a wild horse when impounded, the board shall
10 pursue disposal of the horse pursuant to Section 5 of the Wild
11 Horse Protection Act.

12 Section 5. [NEW MATERIAL] DISPOSITION OF WILD HORSES--
13 ~~ADOPTION PROGRAM - DISPOSITION OF FEES. --~~

14 A. The board shall establish a program for disposal
15 of wild horses impounded and possessed by the board pursuant to
16 the Wild Horse Protection Act. The program may allow for
17 disposal of wild horses pursuant to The Livestock Code or
18 Subsection A or B of this section.

19 B. The board shall establish an adoption program
20 for wild horses impounded and possessed by the board pursuant
21 to the Wild Horse Protection Act. The program:

22 (1) shall include procedures to assure the
23 board that the adoptive owner intends and has the facilities to
24 care for the horse in an humane manner and will not abuse or
25 destroy the horse;

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underscored material = new
[bracketed material] = delete

1 (2) shall include provisions for a fee
2 schedule to charge adoptive owners. Fees received from the
3 adoptive owners shall be first applied by the board to
4 compensate the owner or lessee of the land for any damage
5 caused by the wild horse and next to the board to be retained
6 by it as reimbursement for costs incurred in the impoundment
7 and adoption proceedings;

8 (3) may include provisions for contracting
9 with a public or private entity to administer the adoption
10 program on behalf of the board; and

11 (4) may be implemented in coordination with
12 the federal wild horse adoption program administered pursuant
13 to the federal Wild Free-Roaming Horses and Burros Act.

14 B. If the board determines that a wild horse is
15 old, sick, lame or otherwise unadoptable, the board may destroy
16 the horse in the most humane manner possible.

17 Section 6. [NEW MATERIAL] COORDINATION WITH FEDERAL AND
18 STATE AGENCIES. --

19 A. Pursuant to the Joint Powers Agreements Act, the
20 board may enter into agreements with agencies of the federal
21 government for the purpose of implementing the Wild Horse
22 Protection Act.

23 B. The Wild Horse Protection Act does not apply to
24 horses under the jurisdiction of the federal government
25 pursuant to the provisions of the federal Wild Free-Roaming

1 Horses and Burros Act.

2 Section 7. Section 17-2-7.2 NMSA 1978 (being Laws 1997,
3 Chapter 224, Section 3) is amended to read:

4 "17-2-7.2. LANDOWNER TAKING--CONDITIONS--DEPARTMENT
5 RESPONSIBILITIES. --

6 A. A landowner or lessee, or employee of either,
7 may take or kill an animal on private land, in which they have
8 an ownership or leasehold interest, including game animals and
9 other quadrupeds, except wild horses subject to the Wild Horses
10 Protection Act, game birds and fowl, that presents an immediate
11 threat to human life or an immediate threat of damage to
12 property, including crops; provided, however, that the taking
13 or killing is reported to the department [~~of game and fish~~]
14 within twenty-four hours and before the removal of the carcass
15 of the animal killed, in accordance with regulations adopted by
16 the commission.

17 B. A landowner or lessee, or employee of either,
18 may take or kill animals on private land, in which they have an
19 ownership or leasehold interest, including game animals and
20 other quadrupeds, except wild horses subject to the Wild Horse
21 Protection Act, game birds and fowl, that present a threat to
22 human life or damage to property, including crops, according to
23 regulations adopted by the commission. The regulations shall:

24 (1) provide a method for filing a complaint to
25 the department by the landowner or lessee, or employee of

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1 either of them, of the existence of a depredation problem;

2 (2) provide for various departmental
3 interventions, depending upon the type of animal and
4 depredation;

5 (3) require the department to offer at least
6 three different interventions, if practical;

7 (4) require the department to respond to the
8 initial and any subsequent complaints within ten days with an
9 intervention response to the complaint and to carry out the
10 intervention, if agreed upon between the department and the
11 landowner, within five days of that agreement;

12 (5) permit the landowner or lessee to reject
13 for good cause the interventions offered by the department;

14 (6) require a landowner or lessee to
15 demonstrate that the property depredation is greater in value
16 than the value of any wildlife-related income or fee collected
17 by the landowner or lessee for permission to take or kill an
18 animal of the same species on the private property or portion
19 of the private property identified in the complaint as the
20 location where the depredation occurred; and

21 (7) permit the landowner, lessee or employee,
22 when interventions by the department have not been successful
23 and after one year from the date of the filing of the initial
24 complaint, to kill or take an animal believed responsible for
25 property depredation.

1 C. For purposes of this section:

- 2 (1) "commission" means the state game
3 commission;
4 (2) "department" means the department of game
5 and fish; and
6 (3) "intervention" means a solution proposed
7 by the department to eliminate the depredation. "

8 Section 8. Section 77-2-1.1 NMSA 1978 (being Laws 1993,
9 Chapter 248, Section 2, as amended by Laws 2001, Chapter 8,
10 Section 2 and also by Laws 2001, Chapter 341, Section 2) is
11 amended to read:

12 "77-2-1.1. DEFINITIONS. -- As used in The Livestock Code:

13 A. "animals" or "livestock" means all domestic or
14 domesticated animals that are used or raised on a farm or
15 ranch, including the carcasses thereof, and exotic animals in
16 captivity and includes horses, asses, mules, cattle, sheep,
17 goats, swine, bison, poultry, ostriches, emus, rheas, camelids
18 and farmed cervidae upon any land in New Mexico; provided that
19 for the purposes of Chapter 77, Article 9 NMSA 1978, "animals"
20 or "livestock" have the meaning defined in that article.
21 "Animals" or "livestock" does not include canine or feline
22 animals or wild horses subject to the Wild Horse Protection
23 Act. For the purpose of the rules governing meat inspection,
24 wild animals, poultry and birds used for human consumption
25 shall also be included within the meaning of "animals" or

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1 "livestock";

2 B. "bill of sale" means an instrument in
3 substantially the form specified in The Livestock Code by which
4 the owner or his authorized agent transfers to the buyer the
5 title to animals described in the bill of sale;

6 C. "bison" or "buffalo" means a bovine animal of
7 the [~~species~~] genus bison;

8 D. "board" means the New Mexico livestock board;

9 E. "bond" means cash or an insurance agreement from
10 a New Mexico licensed surety or insurance corporation pledging
11 surety for financial loss caused to another, including
12 certificate of deposit, letter of credit or other surety as may
13 be approved by the United States department of agriculture,
14 packers and stockyards administration or the board;

15 F. "brand" means a symbol or device in a form
16 approved by and recorded with the board as may be sufficient to
17 readily distinguish livestock should they become intermixed
18 with other livestock;

19 G. "brand inspector" means an inspector who is not
20 certified as a peace officer;

21 H. "carcasses" means dead or dressed bodies of
22 livestock or parts thereof;

23 I. "cattle" means animals of the genus bos,
24 including dairy cattle, and does not include any other kind of
25 livestock;

1 J. "dairy cattle" means animals of the genus bos
2 raised not for consumption but for dairy products and
3 distinguished from meat breed cattle;

4 K. "director" means the executive director of the
5 board;

6 L. "disease" means a communicable, infectious or
7 contagious disease;

8 M. "district" means a livestock inspection
9 district;

10 N. "estrays" means livestock found running at large
11 upon public or private lands, either fenced or unfenced, whose
12 owner is unknown, or that is branded with a brand that is not
13 on record in the office of the board or is a freshly branded or
14 marked offspring not with its branded or marked mother, unless
15 other proof of ownership is produced;

16 O. "inspector" means a livestock or brand
17 inspector;

18 P. "livestock inspector" means a certified
19 inspector who is granted full law enforcement powers for
20 enforcement of The Livestock Code and other criminal laws
21 relating to livestock;

22 Q. "mark" means an ear tag or ownership mark that
23 is not a brand;

24 R. "meat" means the edible flesh of poultry, birds
25 or animals sold for human consumption and includes livestock,

1 poultry and livestock and poultry products;

2 S. "mule" means a hybrid resulting from the cross
3 of a horse and an ass; and

4 T. "person" means an individual, firm, partnership,
5 association, corporation or similar legal entity."

6 Section 9. Section 77-9-1.1 NMSA 1978 (being Laws 1999,
7 Chapter 282, Section 46) is amended to read:

8 "77-9-1.1. DEFINITION. --As used in Chapter 77, Article 9
9 NMSA 1978, "livestock" means horses, asses, mules, cattle or
10 bison but does not include wild horses subject to the Wild
11 Horse Protection Act. "